

Attention is directed to Fig. 1 and Paragraphs [0018], [0019] and [0020] of the specification. Paragraph [0018] beginning at line 3, states:

Post mount 100 includes *a stationary portion 105 that provides an attachment rod 104 secured to a substructure such as the ground*, which extends away from the substructure in a direction defining a first axis 121, and post base 109 positioned above the stationary portion on which a post can be mounted. (Emphasis added.)

Paragraph [0019], lines 1-6 provides:

In the embodiment illustrated in Fig. 1, attachment rod 104 *is embedded in an anchor or footing 103 that is securely set in the ground or other substructure*. Anchor 103 is constructed by filling a conventional posthole with a ready mix concrete or anchoring cement approximately to ground level and smoothing the surface to provide a mounting surface 102 that is substantially level and, perpendicular to first axis 121, which should be substantially vertical, at least initially. (Emphasis added.)

In the context of this application, “stationary portion” clearly refers to that portion of the claimed invention that is fixed in position with respect to the ordinary frame of reference, i.e., the Earth. In the embodiment of Fig. 1 the stationary portion 105 comprises an attachment rod 104 and an anchor or footing 103 securely set in the ground or other substructure. It is respectfully submitted that the sections from the specification quoted above clearly describe differences between stationary portion 105 and anchor 103. Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112 and allowance of claim 1.

Claim 23 was rejected Under 35 U.S.C. §112 as unclear based on use of the word “attitude.” Claim 23 provides, in relevant part:

... angularly adjusting the **attitude** of the post /post base to compensate for any vertical misalignment in the first axis by pivoting the post base about the first axis and positioning the attachment rod in the slot aperture to offset the center of the post base from the first axis until the post is vertical...
(Claim 23, lines 13-16. Emphasis supplied.)

“Attitude” may be defined as “[t]he position of a body as determined by the inclination of the axes to some frame of reference. If not otherwise specified, this frame of reference is fixed to the Earth.” *US Department of Defense Dictionary of Military and Associated Terms*. US Department of Defense, 2003. The meaning of the word “attitude” in the context used in the application and in light of the above dictionary definition is clear. It is respectfully submitted that that this definition comports with the ordinary and customary meaning that would have been given the word by those of skill in the art at the time of the claimed invention. Accordingly, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112 and allowance of claim 23.

Claims 1-9, 14, 19, 23 and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by Warner (U.S. Patent No. 5,921,695) (“Warner”). Respectfully, applicant disagrees.

The present invention, as set forth in claim 1, calls for:

A mounting apparatus for a post, including **a stationary portion having an attachment rod secured to a substructure** and extending from the substructure in a direction defining a first axis; a post base positioned above the stationary portion comprising a post mounting surface and a curved downwardly facing bottom surface, the curved downwardly facing bottom surface having a slotted aperture through which the attachment rod extends; a lower bearing positioned beneath the post base, the lower bearing comprising a curved upwardly facing surface substantially corresponding in curvature to the curved downwardly facing bottom surface of the post base and in slidable engagement therewith, and providing a central aperture through which the attachment rod extends; and means to releasably secure the post base to the stationary portion; wherein the post base may be rotated about the first axis and angularly offset therefrom, to enable a mounted post to be angularly aligned and secured. (Emphasis supplied)

Warner fails to teach or suggest at least the following elements of the claimed invention.

The Office action states that the claimed **stationary portion** reads on Warner’s jam nut 19.

Stationary is defined as:

1. a. Not moving.
- b. Not capable of being moved; fixed.

The American Heritage® Dictionary of the English Language, Fourth Edition. Copyright © 2000 by Houghton Mifflin Company. It is respectfully submitted that that this definition comports with the ordinary and customary meaning that would have been given the word by those of skill in the art at the time of the claimed invention.

In contrast, according to Warner,

[u]pon **rotation** of jam nut 19 so that it backs away, i.e., **unscrews**, from the external threads 30 of retaining plate 29, **both jam nut 19 and retaining plate 29 are forced to move** simultaneously in dual directions away from one another. Warner, Col. 3, lines 56-61, emphasis supplied.

Thus, according to Warner, jam nut 19 must be both rotatable and translatable.

It is clear that Warner's jam nut 19 is an element that moves. In fact, if jam nut 19 were not moveable, Warner's device would not be adjustable. Thus, jam nut 19 should not be considered a **stationary portion**, as claimed. Accordingly, for this reason, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 1-9, 14, 19, 23 and 24.

The Office action also argues that the claimed **attachment rod** of the **stationary portion** may be read on Warner's **anchor bolt 34**. However, Warner's **anchor bolt** also is not **stationary**; nor is it **secured to a substructure** that is part of the stationary portion, as claimed. Warner repeatedly states that anchor bolt 34 is moveable. According to Warner ... "anchor bolt 34 is **unscrewed**..." (Col. 4, line 37); ... "anchor bolt 34 is first **rotated**" ... (Col. 4, lines 40-41); ... "permits the **rotational adjustment** of anchor bolt 34" ... (Col. 4, lines 61-62). If Warner's anchor bolt 34 were stationary, Warner's dead handle would not be adjustable. Moreover, Warner's discussion of the prior art anchor bolt 24 shown in Figs. 1 and 2 makes it clear that anchor bolt 24 is also a moveable element. See, e.g., Col. 3, line 13. Accordingly, for this additional reason, applicant respectfully requests

reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 1-9, 14, 19, 23 and 24.

The Office action further argues that the claimed **substructure** of the **stationary portion** reads on Warner's **tool body 5**. Warner's **tool body 5** is clearly not part of a stationary portion inasmuch as Warner's invention is directed to a dead handle for use with "handheld power tools" (Col. 1, line 10) which by their very nature *are moveable*. Accordingly, for this additional reason, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 1-9, 14, 19, 23 and 24.

Regarding claims 4, 16, 19 and 23-25, nowhere does Warner teach or suggest a mounting apparatus wherein the upper and lower bearing surfaces comprise **semispherical** curved surfaces. As the specification clearly states, semispherical curved surfaces are "surfaces that provide substantially spherical symmetry about a central axis." Paragraph [0025], lines 4-5. Nowhere does Warner teach or suggest the use of **semishperical curved surfaces**. Warner's arbor lock 14 shows, if anything, a cylindrical bearing surface. See Warner's Fig. 3. Such a surface lacks spherical symmetry about the central axis. Accordingly, for this additional reason, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 16, 19 and 23-25.

Claims 14-18 call for a **substantially disc shaped lower bearing**. Warner fails to teach or suggest a **substantially disc shaped lower bearing**. If anything, Warner shows a cylindrical bearing. Again, attention is directed to Warner's Fig. 3. Accordingly, for this additional reason, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 14-18.

Nor does Warner teach or suggest a **substantially cup shaped post base** positioned above the lower bearing called for in claims 14-18. See Warner's Figs. 3 and 4. The Office action simply does not address this claim limitation. For this additional reason, applicant

respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 14-18.

Warner also completely fails to teach or suggest a **fastener that engages the bolt** to releasably secure the mount in position as called for in claims 14-18. Warner's cap screw 16 is threaded into tapered arbor 13 and *simply does not engage anchor bolt 34*. This limitation is not addressed in the Office action. For this additional reason, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 14-18.

Moreover, with regard to claims 14-18, Warner fails to teach or suggest a mounting apparatus for a post wherein a mounted post may be angularly offset from the first axis in a desired direction by **translating the bolt in the elongate aperture and rotating the post about the first axis**. Warner's anchor bolt 34 is *pinned* into the sector slot 32 by a roll pin 27 which completely prevents translational movement of anchor bolt 34 in the sector slot 32. See Fig. 3. This limitation is also not addressed in the Office action. For this additional reason, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 14-18.

Additionally, Claims 2 and 3 call for a mounting apparatus according to claim 1 *wherein the curved downwardly facing bottom surface is concave and curved upwardly facing surface is convex*. It appears that the Warner reference, as interpreted in the Office action, calls for exactly the opposite configuration. See Fig. 3. For this additional reason, applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) and allowance of Claims 2 and 3.

35 U.S.C. §103(a) Rejection

Claims 10-13, 15-18, 21, 22 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Warner. Respectfully, these rejections should be reconsidered and

withdrawn for a number of reasons. As is apparent from the many differences between the Warner patent and the invention of this application, Warner is not directed to the applicant's field of endeavor and is not reasonably pertinent to the particular problem with which the inventor is concerned. A person of ordinary skill, seeking to solve the problem of mounting a post for a road sign, marker, traffic delineator, and the like in the ground or another substructure, so that it might easily be readjusted to an upright position from time to time, would not reasonably be expected or motivated to look to prior art concerning adjustable dead handles meant for attachment to hand held power tools. See MPEP 2141.01(a). For this reason, applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 10-13, 15-18, 21, 22 and 25 were rejected under 35 U.S.C. §103(a).

With regard to claim 10, the Office action states that it would have been a matter of "design choice" to one of ordinary skill in the art to have an anchor comprising concrete "for a heavier post in order to have more compression strength (which is concrete's material property.)" Office action at page 8, paragraph 1. Likewise with regard to claim 11, the Office action states that it would have been a matter of "design choice" to one of ordinary skill in the art to have a mounting apparatus comprising gray iron.

The rejections of claims 10 and 11 are based on hindsight reasoning using applicant's specification as a template. There is no suggestion or teaching in Warner that any component part should be made from concrete. It would be an absurdity to anchor Warner's dead handle in concrete. Nor without benefit of applicant's disclosure and impermissible hindsight would it have been obvious to modify Warner to make any component part out of gray iron. The prior art must provide a motivation or reason for one of ordinary skill in the art, without the benefit of applicant's specification, to make the necessary changes *in the reference device*. If anything, a plastic, composite or light weight metal capable of sustaining large plastic deformations without fracture would be selected by one of ordinary skill in the power tool arts to make a dead handle as taught by Warner. Gray iron was not arbitrarily chosen by applicant. As noted in the specification at

paragraph [0028] “a gray iron casting can be designed to break or shatter in response to a predetermined impact force.”

With regard to claims 12, 13, 17-18, 21-22 and 25 the Office states that Warner inherently shows a post base **configured** to will break away from the mount **in response to the force of a vehicle impact**. This specific claim language is essentially glossed over in the Office action. There is no reason one of ordinary skill would configure a tool handle such as Warner’s to have a break away capability, much less a break away capability **configured** to break away from the mount **in response to the force of a vehicle impact**. For a feature to be inherently taught by a reference it must necessarily be present. Such is not the case. Again, the Office has engaged in impermissible hindsight in looking to applicant’s specification as a template and appears to have overlooked these specific claim limitations. For these additional reasons, applicant respectfully requests reconsideration and withdrawal of the rejection of claims 2, 13, 17-18, 21-22 and 25 under 35 U.S.C. §103(a).

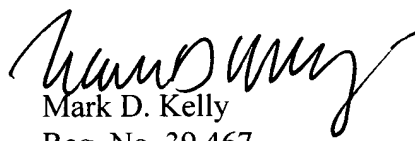
Claims 15 and 16 calls for a mounting apparatus wherein the **lower bearing is convex** and the **bottom surface of the post base is concave** and said surfaces comprise approximately equal radiuses of curvature. The Office action correctly observes at page 6 that Warner’s jam nut 29 is concave and arbor 14 is convex. The Office action has identified jam nut 29 as corresponding to the claimed lower bearing and arbor 14 as corresponding to the claimed post base. Thus, for this additional reason applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 15 and 16 under 35 U.S.C. §103(a).

CONCLUSION

For the above-cited reasons, applicant respectfully requests that the Examiner allow the claims of the present application. The Examiner is invited to contact applicant's representative at the number shown below if there are any questions regarding this application or if prosecution of this application may be assisted thereby.

Respectfully submitted,

Date: July 18, 2006


Mark D. Kelly
Reg. No. 39,467

Attorney for Applicant
5401 N. Shoreland Ave.
Whitefish Bay, WI 53217
Tel: 414-431-5351 or
414-967-1347